INSANITY AND CRIMINAL RESPONSIBILITY.

EDWIN R. KEEDY.[1]

(Report of Committee B of the Institute. Concluded from March number.)

Edwin R. Keedy (professor of law in Northwestern University), *Chairman.*
Adolf Meyer (professor of psychiatry in Johns Hopkins University), Baltimore.
Harold N. Moyer (physician), Chicago.
W. A. White (superintendent Government Hospital for the Insane), Washington.
William E. Mikell (professor of law in University of Pennsylvania), Philadelphia.
Albert C. Barnes (judge of the Superior Court), Chicago.
Walter Wheeler Cook (professor of law in University of Chicago).
Morton Prince (physician), Boston.
William S. Forrest (lawyer), Chicago.

NEW JERSEY.

Persons acquitted on trial upon plea of insanity; admission at expense of county.—That when a person shall have escaped indictment, or have been acquitted of a criminal charge upon trial, on the ground of insanity, upon the plea pleaded of insanity, or otherwise, the court being certified by the jury or otherwise of the fact, shall carefully inquire and ascertain whether his insanity in any degree continues, and if it does, shall order him in safe custody, and to be sent to the hospital prescribed by the rules and regulations aforesaid; the county from which he is sent shall defray all his expenses while there, and of sending him back, if returned; but the county may recover the amount so paid from his own estate, if he has any, or from any relative or county that would have been bound to provide for and maintain him elsewhere.

Persons confined under indictment, etc., appearing insane; admission at expense of county.—That if any person in confinement, under indictment or for want of bail for good behavior, or for keeping the peace, or appearing as a witness, or in consequence of any summary conviction, or by order of any justice, or under any other than civil process, shall appear to be insane, the judge of the circuit court of the county where he is confined shall institute a careful investigation, call a reputable physician and other credible witnesses, invite the prosecutor of the pleas to aid in the examination, and if he shall deem it necessary, call a jury, and for that purpose is fully empowered to compel the attendance of witnesses and jurors, and if it be satisfactorily proved that he is insane, said judge may discharge him from imprisonment, and order his safe custody and removal to one of said hospitals, prescribed by the rules and regulations aforesaid, where he shall remain until restored to his right mind; and then, if the said judge shall have so directed, the medical director shall inform the said judge and the county clerk and prosecutor of the pleas

---

[1]Professor of Law in Northwestern University. He is a graduate of Franklin and Marshall College and the Harvard Law School. He was the first Secretary of the American Institute of Criminal Law and Criminology, and is now the Secretary of the American branch of the International Union of Criminal Law. He was a member of the commission which investigated and reported upon the criminal procedure of England, and is author of a number of articles on criminal law and procedure.

thereof, whereupon he shall be remanded to prison, and criminal proceedings be resumed or otherwise discharged; the provisions of the last preceding section, requiring the county to defray the expenses of a patient sent to such hospital, shall be equally applicable to similar expenses arising under this section and the one next following.

Persons charged with misdemeanors, acquitted on plea of insanity, sent to hospital.—That persons charged with misdemeanors, and acquitted on ground of insanity, may be kept in custody and sent to the hospital, prescribed by said rules and regulations, in the same way as persons charged with crime.—Compiled Statutes, 1910, secs. 33-35, p. 3186.

Discharge of criminal patients.—That a patient of a criminal class may be discharged by order of one of the justices of the supreme court, if, upon due investigation, it shall appear safe, legal and right to make such order.—Compiled Statutes, 1910, sec. 43, p. 3188.

NOTE: The method of determining the question whether a person confined in hospital for the insane, on behalf of whom a writ of *habeas corpus* has been issued, has regained his sanity, is prescribed by sections 31 a-d, p. 2646, of the Compiled Statutes, 1910.

NEW MEXICO

Persons found insane, on trial for crime, how kept in custody.—Whenever it shall appear, upon the trial of any person charged with any crime or misdemeanor, that such person was insane at the time of the commission of the same and such person shall be acquitted, the jury shall be required to find specially whether such person was insane at the time of the commission of such offense, and to declare whether he was acquitted by them on the ground of such insanity, and if they shall so find and declare, the court before whom the trial was had, shall have power to order such person to be kept in strict custody, in such place and in such manner as to the said court shall seem fit, at the expense of the county in which the trial was had, so long as such person shall continue to be of unsound mind. The same proceedings shall be had if any person indicted for an offense shall, upon arraignment, be found to be a lunatic or habitual drunkard, by a jury lawfully impaneled for the purpose, or if upon the trial of any person so indicted, such person shall appear to the jury charged with such indictment to be a lunatic, in which case the court shall direct such finding to be recorded, and may proceed as aforesaid.—Compiled Laws, 1897, sec. 3437.

NEW YORK

Irresponsibility of idiot or lunatic.—An act done by a person who is an idiot, imbecile, lunatic or insane is not a crime. A person can not be tried, sentenced to any punishment or punished for a crime while he is in a state of idiocy, imbecility, lunacy or insanity so as to be incapable of understanding the proceeding or making his defense.

A person is not excused from criminal liability as an idiot, imbecile, lunatic, or insane person, except upon proof that, at the time of committing the alleged criminal act, he was laboring under such a defect of reason as:

1. Not to know the nature and quality of the act he was doing; or,
2. Not to know that the act was wrong.—Consolidated Laws, 1909, sec. 1120 (p. 2675).

Proceedings when person in confinement appears to be insane.—If any person in confinement under indictment, or under a criminal charge, or for want of bail for good behavior, or for keeping the peace, or for appearing as a witness, or by order of any justice, or under any other than civil process, shall appear to be insane, a judge of a court of record of the city or county or a justice of the supreme court of the judicial district in which the alleged insane person is confined, in all cases outside the city of New York, and in all cases within the city of New York in which the maximum fine for the offense exceeds five hundred dollars or the term of imprisonment for the offense exceeds one year, shall institute a careful investigation, call two legally qualified examiners in lunacy, neither of whom shall be a physician connected with the institution in which such person so to be examined is confined, and other credible wit-

nesses, invite the district attorney to aid in the examination, and if he deem it necessary, call a jury, and for that purpose is fully empowered to compel the attendance of witnesses and jurors, and if it be satisfactorily proved that he is insane, said judge shall discharge him from imprisonment and instead commit him to a state institution for the care, custody and treatment of the insane, where he shall remain until restored to his right mind. When an insane person, committed to a state institution in accordance with the provisions of this section, shall have been restored to his right mind, the superintendent of such institution shall inform the judge who committed the person of the fact of his recovery, and such person shall be returned forthwith to the authority by which he was originally held in confinement; and the proceeding for which the person was in such confinement shall then be resumed.—Laws of 1910, chap. 557, part of sec. 1 (amending sec. 836 of the code of criminal procedure).

Plea of insanity.—Whenever a person, in confinement under indictment, desires to offer the plea of insanity, he may present such plea at the time of his arraignment, as a specification under the plea of not guilty.—Code of Criminal Procedure, sec. 336 (Birdseye's General Statutes, 1901, sec. 63, p. 1729).

[*Appointment of commission to determine whether accused was insane at time of the commission of the crime.*]—When a defendant pleads insanity, as prescribed in section three hundred and thirty-six, the court in which the indictment is pending, instead of proceeding with the trial of the indictment, may appoint a commission of not more than three disinterested persons, to examine him and report to the court as to his sanity at the time of the commission of the crime. The commission must summarily proceed to make their examination. Before commencing they must take the oath prescribed in the code of civil procedure, to be taken by referees. They must be attended by the district attorney of the county, and may call and examine witnesses and compel their attendance. The counsel of the defendant may take part in the proceedings. When the commissioners have concluded their examination, they must forthwith report the facts to the court with their opinion hereon.—Laws of 1910, chap. 557, sec. 2 (amending sec. 658 of the code of criminal procedure).

If found insane, trial or judgment suspended.—If the commission find the defendant insane the trial or judgment must be suspended, until he becomes sane; and the court, if it deem his discharge dangerous to the public peace or safety, must order that he be, in the meantime, committed by the sheriff to a state lunatic asylum, and that upon his becoming sane, he be re-delivered by the superintendent of the asylum to the sheriff.—Code of Criminal Procedure, sec. 659 (Birdseye's General Statutes, 1901, sec. 176, p. 1796).

Habeas corpus.—Any one in custody as an insane person is entitled to a writ of *habeas corpus,* upon a proper application made by him or some friend in his behalf. Upon the return of such writ, the fact of his insanity shall be inquired into and determined. The medical history of the patient, as it appears in the case book, shall be given in evidence, and the superintendent or medical officer in charge of the institution wherein such person is held in custody, and any proper person shall be sworn touching the mental condition of such person. —Consolidated Laws, 1909, sec. 93, p. 1662.

NORTH CAROLINA

Criminals adjudged to be insane, committed to hospital for the insane.—All persons who may hereafter commit crime while insane, and all persons, who being charged with crime, and are adjudged to be insane at the time of their arraignment, and for that reason can not be put on trial for the crimes alleged against them, shall be sent by the court before whom they are or may be arraigned for trial, when it shall be ascertained by due course of law that such person is insane and can not plead, to the hospital for the dangerous insane, and they shall be confined therein under the rules and regulations prescribed by the board of directors under the authority of this subchapter, and they shall be treated, cared for and maintained in said hospital like patients in other state hospitals. Their confinement in said hospital shall not be regarded as punishment for any offense: *Provided,* That no insane person who has been or may

hereafter be committed to the state hospital at Morganton, Raleigh or Goldsboro shall be transferred therefrom to the hospital for the dangerous insane.

Persons acquitted of certain crimes upon ground of insanity confined in.—When a person is accused of the crime of murder, attempt at murder, rape, assault with the intent to commit rape, highway robbery, train wrecking, arson or other crime, shall have escaped indictment, or shall have been acquitted upon trial upon the ground of insanity, or shall be found by the court to be without sufficient mental capacity to undertake his defense or to receive sentence after conviction, the court before which such proceedings are had shall detain such person in custody until an inquisition shall be had in regard to his mental condition. The judge shall, at the term of court at which such person is acquitted, cause notice to be given in writing to such person and his attorney, and, if in his good judgment it be necessary, to his nearest relative, naming the day upon which he shall proceed to make an inquisition in regard to the mental condition of such person. The judge shall cause such witnesses to be summoned and examined as he may deem proper or as the person so acquitted or his counsel may desire. At such inquisition the judge shall cause the testimony to be taken in writing and be preserved, and a copy of which shall be sent to the superintendent of the hospital for the dangerous insane to which such person is or has been committed. If, upon such inquisition, the judge shall find that the mental condition or disease of such person is such as to render him dangerous either to himself or other persons, and that his confinement for care, treatment, and security demands it, he shall commit such person to the hospital for dangerous insane, to be kept in custody therein for treatment and care as herein provided. Such person shall be kept therein, unless transferred under previous provisions of this chapter, until restored to his right mind, in which event it shall be the duty of the authorities having the care of such person to notify the sheriff of the county from which he came, who shall order that he appear before the judge of the superior court of the district, to be dealt with according to law. The expense incident to such commitment and removal shall be paid by the county authorities from which such patient was sent.—Revisal of 1905, secs. 4617 and 4618.

Person acquitted of capital felony upon ground of insanity; how discharged.—No person acquitted of a capital felony, on the ground of insanity, and committed to the hospital for the dangerous insane, shall be discharged therefrom unless an act authorizing his discharge be passed by the general assembly. No person acquitted of a crime of a less degree than a capital felony and committed to said department shall be discharged therefrom except upon an order from the governor. No person convicted of a crime, and upon whom judgment was suspended by the judge on account of insanity, shall be discharged from the said hospital except upon the order of the judge of the district, or of the judge holding the courts of the district in which he was tried: *Provided,* That nothing in this section shall be construed to prevent such person so confined in the hospitals for the dangerous insane from applying to any judge having jurisdiction for a writ of *habeas corpus.* No judge, issuing a writ of *habeas corpus* upon the application of such person, shall order his discharge, until the superintendents of the several state hospitals shall certify that they have examined such person and find him to be sane, and that his detention is no longer necessary for his own safety or the safety of the public.—Revisal of 1905, sec. 4620.

NORTH DAKOTA

Who capable of crime.—Lunatics, insane persons and all persons of unsound mind, including persons temporarily or partially deprived of reason, upon proof that at the time of committing the act charged against them they were incapable of knowing its wrongfulness.—Revised Codes, 1905, sec. 8544, 4.

Sections 10208-10215 of the Revised Codes, 1909, prescribing the method for determining whether an accused person is insane at the time of the trial, are practically the same as sections 1367-1372 of the Penal Code of California, 1901.

When defense insanity, and jury acquits.—If the defense is the insanity of the defendant, the jury must be instructed, if they acquit him on that ground,

to state the fact with their verdict. The court may thereupon, if the defendant is in custody, and it deems his discharge dangerous to the public peace or safety, order him to be committed to the care of the sheriff until he becomes sane.—Revised Codes, 1905, sec. 10064.

Acquitted for insanity; court may commit.—When a jury has returned a verdict acquitting a defendant upon the ground of insanity, the court may thereupon, if the defendant is in custody, and it deems his discharge dangerous to the public safety, order him to be committed to the state hospital for the insane, or to the care of such person or persons as the court may direct till he becomes sane.—Revised Codes, 1905, sec. 8547.

Insane persons entitled to habeas corpus.—All persons confined as insane shall be entitled to the benefit of the writ of *habeas corpus,* and the question of insanity shall be decided at the hearing, and if the judge or court shall decide that the person is insane, such decision shall be no bar to the issuing of the writ a second time, whenever it shall be alleged that such person shall have been restored to reason.—Revised Codes, 1905, sec. 1906.

OHIO

When accused was insane or an idiot at commission of offense.—If, before the indictment of a person confined in jail charged with an offense, notice in writing is given by a citizen to the sheriff or jailer that such person was insane or an idiot at the time the offense was committed, or has since become insane, such sheriff or jailer shall forthwith give the notices and an examining court shall be held as provided in the next preceding section. If such judge find that such person was an idiot when he committed the offense, or was then or still is insane, or afterward became and still is insane, he shall, at his discretion, proceed as required by law after inquest held.—General Code, 1910, sec. 13531.

Grand jury finding accused insane.—If a grand jury upon investigation of a person accused of crime finds such person to be insane, it shall report such finding to the court of common pleas. Such court shall order a jury to be impaneled to try whether or not the accused is sane at the time of such impaneling, and such court and jury shall proceed in a like manner as provided by law when the question of the sanity of a person indicted for an offense is raised at any time before sentence. If such person is then found to be insane, he shall be committed to the Lima state hospital until restored to reason. This section shall not be in force and effect until the Lima .state hospital is ready for the reception of inmates as certified to the courts by the governor and secretary of state.—General Code, 1910, sec. 13577.

Whether accused is insane may be tried to a special jury.—When the attorney of a person indicted for an offense suggests to the court in which such indictment is pending, and before sentence, that such person is not then sane and a certificate of a reputable physician to that effect is presented to the court, such court shall order a jury to be impaneled to try whether or not the accused is sane at the time of such impaneling. Thereupon a time shall be fixed for a trial, a jury shall be drawn from the jury-box and a venire issued, unless the prosecuting attorney or the attorney of the accused demand a struck jury, in which case such jury shall be selected and summoned as required by law. The jury shall be sworn to try the question whether the accused is or is not sane, and a true verdict give according to the law and the evidence, and, on the trial, the accused shall hold the affirmative.

Verdict by three-fourths of jury.—If three-fourths of the jurors provided for in the next preceding section, agree upon a verdict, their finding may be returned as the verdict of such jury, and a new trial may be granted on the application of the attorney of the accused, for the causes and in the manner provided in this title.

Proceedings on verdict of such jury.—If three-fourths of the jurors do not agree, or the verdict is set aside, another jury shall be impaneled to try the question. If the jury find the accused to be sane and no trial has been had on the indictment, a trial shall be had thereon as if the question had not been tried. If the jury find him to be not sane, that fact shall be certified by the clerk to

the probate court, and the accused, until restored to reason, shall be dealt with by such court as upon inquest had. If he is discharged, the bond given for his support and safe-keeping shall contain a condition that, when restored to reason, he shall answer to the offense charged in the indictment, or of which he has been convicted, at the next term of the court thereafter and abide the order of such court.—General Code, 1910, secs. 13608-13610.

Proceedings when accused is acquitted on the sole ground of insanity.—When a person tried upon an indictment for an offense is acquitted on the sole ground that he was insane, such fact shall be found by the jury in the verdict, and certified by the clerk to the probate court. Such person shall not be discharged, but forthwith delivered to the probate court, to be proceeded against upon the charge of lunacy, and the verdict shall be *prima facie* evidence of his insanity.—General Code, 1910, sec. 13612.

Benefit of habeas corpus.—All persons confined as insane shall be entitled to the benefit of the writ of *habeas corpus,* and the question of insanity must be decided at the hearing. If the judge decides that such person is insane, the decision shall be no bar to the issuing of the writ a second time, if it is alleged that such person has been restored to reason.—General Code, 1910, sec. 1976.

OKLAHOMA.

Insane; idiot.—The term "insane" as used in this act includes any species of insanity or mental derangement. The term "idiot" is restricted to persons supposed to be naturally without mind. No idiot will be admitted into the hospital for the insane.—General Statutes, 1908, sec. 3326.

Sections 2425-2433 of the General Statutes, 1908, prescribing the method and procedure for determining whether an accused person is insane at the time of the trial, are practically the same as sections 1367-1372 of the Penal Code of California, 1901.

Defense of insanity and acquittal.—If the defense is the insanity of the defendant, the jury must be instructed, if they acquit him on that ground, to state the fact with their verdict. The court may thereupon, if the defendant is in custody and they deem his discharge dangerous to the public peace or safety, order him to be committed to the care of the sheriff until he becomes sane.—General Statutes, 1908, sec. 2197.

Release of persons alleged not to be insane.—On a statement in writing, verified by affidavit, addressed to the judge of the county in which the hospital is situated, or of the county in which any certain person confined in the hospital has his or her legal settlement, alleging that such person is not insane and is unjustly deprived of his or her liberty, such judge shall appoint a commission of not more than three persons in his discretion to inquire into the merits of the case, one of whom shall be a physician; and if two or more are appointed, another shall be an attorney. Without first summoning the party to meet them, they shall proceed to the hospital and have a personal interview with such person, so managed so as to prevent him or her, if possible, from suspecting its object; and they shall make any inquiries or examinations they may deem necessary and proper of the officers and records of the hospital, touching the merits of the case. If they shall deem it prudent and advisable they may disclose to the party the object of their visit, and in the presence of such party make further investigation of the matter. They shall forthwith report to the judge making the appointment, the result of their examinations and inquiries. Such report shall be accompanied by a statement of the case and signed by the superintendent. If on such report and statement and the hearing of the testimony, if any is offered, the judge shall find the person not insane, he shall order his or her discharge. If on the contrary, he shall so state, and authorize his or her continued detention. The finding and order of the judge, with the report and other papers, shall be filed in his office and entered on his records, and he shall forthwith notify the superintendent of his finding and order, and the superintendent shall carry out the order. The commissioners appointed as provided in this section shall be entitled to their necessary expenses, and a reasonable compensation to be allowed by said judge, and paid by the state out of any funds

not otherwise appropriated; *Provided,* that the applicant shall pay the same if the judge shall find that the application was made without probable grounds, and shall so order.—General Statutes, 1908, sec. 3321.

Insane persons entitled to habeas corpus.—All persons confined as insane shall be entitled to the benefit of the writ of *habeas corpus,* and the question of insanity shall be decided at the hearing, and if the judge or court shall decide that the person is insane, such decision shall be no bar to the issuing of the writ the second time whenever it shall be alleged that such person has been restored to reason.—General Statutes, 1908, sec. 3323.

OREGON.

Insanity must be proven.—When the commission of the act charged as a crime is proven, and the defense sought to be established is the insanity of the defendant, the same must be proven beyond a reasonable doubt.—Lord's Oregon Laws, 1910, sec. 1527.

Proceedings, when defendant acquitted on account of insanity.—If the defense be the insanity of the defendant, the jury must be instructed, if they find him not guilty on that ground, to state that fact in their verdict, and the court must thereupon, if it deems his being at large dangerous to the public peace or safety, order him to be committed to any lunatic asylum authorized by the state to receive and keep such persons, until he become sane, or be otherwise discharged therefrom by authority of law.—Lord's Oregon Laws, 1910, sec. 1558.

Court may commit insane criminals.—The courts of this state shall have power to commit to the care of said contractors any person who may have been charged with an offense punishable by imprisonment or death who shall have been found to be insane or idiotic, and who shall continue to be insane or idiotic.—Lord's Oregon Laws, 1910, sec. 4441.

Note to sec. 4441. At the time this section was passed (1862) insane and idiotic persons were kept under contract by private individuals, who owned the asylum.

PENNSYLVANIA.

Where prisoner brought up to be discharged appears to be insane.—In every case in which any person charged with any offense shall be brought before the court to be discharged for want of prosecution, and shall by the oath or affirmation of one or more credible persons, appear to be insane, the court shall order the district attorney to send before the grand jury a written allegation of such insanity, in the nature of a bill of indictment; and thereupon the said grand jury shall make inquiry into the case, as in cases of crimes, and make presentment of their finding to said court thereon; and thereupon the court shall order a jury to be impaneled to try the insanity of such person; but before a trial thereof be ordered, the court shall direct notice thereof to be given to the next of kin of such person, by publication or otherwise, as the case requires, and if the jury shall find such person to be insane, the like proceedings may be had as aforesaid.—Purdon's Digest, 1905, sec. 80, p. 2403.

[*Verdict and commitment.*]—In every case in which it shall be given in evidence, upon the trial of any person charged with any crime or misdemeanor, that such person was insane at the time of the commission of such offense, and he shall be acquitted, the jury shall be required to find specially whether such person was insane at the time of the commission of such offense, and to declare whether he was acquitted by them on the ground of such insanity; and if they shall so find and declare, the court before whom the trial is had shall have power to order him to be kept in strict custody, in such place and in such manner as to the said court shall seem fit, at the expense of the county in which the trial is had, so long as such person shall continue to be of unsound mind.

Where he is found insane upon arraignment.—The same proceedings may be had, if any person indicted for an offense shall, upon arraignment, be found to be a lunatic, by a jury lawfully impaneled for the purpose, or if, upon the trial of any person so indicted, such person shall appear to the jury, charged with such indictment, to be a lunatic, the court shall direct such finding to be

recorded, and may proceed as aforesaid.—Purdon's Digest, 1905, secs. 78 and 79, p. 2403.

Courts may commit insane criminals.—The courts of this commonwealth shall have power to commit to said asylum (Pennsylvania state lunatic hospital), any person who, having been charged with an offense punishable by imprisonment or death, shall have been found to have been insane, in the manner now provided by law, at the time the offense was committed, and who still continues insane; and the expense of said persons, if in indigent circumstances, shall be paid by the county to which he or she may belong by residence.—Purdon's Digest, 1905, sec. 78, p. 2371.

Persons acquitted of certain heinous offenses on the ground of insanity, not to be sent to the asylum.—No person shall hereafter be sent to the said lunatic hospital (Pennsylvania state lunatic hospital), under the 10th section of the act of the 14th of April, 1845, or any other law of this commonwealth, who shall have been charged with homicide, or having endeavored or attempted to commit the same, or to commit any arson, rape, robbery or burglary, and have been acquitted of any such offenses on the ground of insanity, or been proceeded against under the 59th or 60th section of the act of the 13th of June, 1836, relative to lunatics and habitual drunkards, where the court trying such person, or hearing the case, shall be satisfied that it is dangerous for said lunatic to be at large, on account of having committed, or attempted to commit, either of the crimes aforesaid, but such persons shall be continued in the penitentiary of the proper district, or the prison of the county; *Provided,* that said court shall still have power to order any such person to be confined in the said lunatic hospital if, on full examination, it shall be satisfied that there is reason to believe that a cure of the insanity may be speedily effected by sending him or her thereto.—Purdon's Digest, 1905, sec. 89, p. 2373.

[*Discharge of persons acquitted on the ground of insanity*].—If, after a confinement of three months' duration, any law judge shall be satisfied by the evidence presented to him that the prisoner has recovered, and that the paroxysm of insanity in which the criminal act was committed was the first and only one he had ever experienced, he may order his unconditional discharge. If, however, it shall appear that such paroxysm of insanity was preceded by at least one other, then the court may, in its discretion, appoint a guardian of his person, and to him commit the care of his prisoner; said guardian giving bond for any damage his ward may commit; *Provided always,* that in case of homicide or attempted homicide, the prisoner shall not be discharged, unless in the opinion of the superintendent and three-fourths of the managers of the hospital and the court before which he or she was tried, he or she has recovered and is safe to be at large.—Purdon's Digest, 1905, sec. 5, p. 2359.

Habeas corpus to lie for such persons.—On a written statement, properly sworn to or affirmed being addressed by some respectable person to any law judge, that a certain person then confined in a hospital for the insane is not insane, and is thus unjustly deprived of his liberty, the judge shall issue a writ of *habeas corpus,* commanding that the said alleged lunatic be brought before him for a public hearing, where the question of his or her alleged lunacy may be determined, and where the onus of proving the said alleged lunatic to be insane shall rest upon such persons as are restraining him or her, of his or her liberty.—Purdon's Digest, 1905, sec. 3, p. 2359.

RHODE ISLAND.

Person under indictment acquitted because insane.—Whenever, on the trial of any person upon an indictment, the accused shall set up in defense thereto his insanity, the jury, if they acquit such person upon such ground, shall state that they have so acquitted him; and if the going at large of the person so acquitted shall be deemed by the court dangerous to the public peace, the court shall certify its opinion to that effect to the governor, who, upon the receipt of such certificate, may make provision for the maintenance and support of the person so acquitted, and cause such person to be removed to the prison insane ward, the state hospital for the insane, or other institution for the insane during the continuance of such insanity.—Laws of 1910 (Aug. sess.), chap. 642, sec. 1.

Justice of Supreme Court may examine prisoners alleged to be insane.—On the petition of the agent of state charities and corrections, or of the officer having the custody of any person awaiting trial or imprisoned in any county of the state, setting forth that such person is insane, any justice of the supreme court may make such an examination of said person as in his discretion he shall deem proper.

And may order their removal.—If, upon such examination, said justice is satisfied that the person thus imprisoned is insane or idiotic, he may order the removal of such prisoner from the jail aforesaid to the state asylum for the insane, if he can be there received; if not, to the Butler Hospital for the insane.

May remand persons so removed to place of original confinement.—Any person removed as aforesaid, upon restoration to reason, may, by order of any of the justices of the supreme court, in his discretion, be remanded to the place of his original confinement, to await his trial for the offense for which he stands committed.—General Laws, 1909, title XIII, secs. 35-37.

SOUTH CAROLINA.

Degree of insanity necessary for confinement in state hospital for the insane.—A person shall be considered insane or fit to be a patient in the hospital who exhibits in the first place such a degree of brain disability or mental aberration as to render him or her dangerous to others or dangerous to his or her own life or person, or dangerous to property; in the second place, this disability must not be transient like delirium in a fever, but of a more or less permanent character; in the third place, lack or loss of mental ability to properly conduct his or her usual work or business shall be considered along with aberrant conduct in determining the question of a person's insanity.—Code of Laws, 1902, part of sec. 2249.

When judges may send persons to hospital in criminal cases; support of.—Any judge of the circuit court is authorized to send to the state hospital for the insane every person charged with the commission of any criminal offense who shall, upon the trial before him, prove to be *non compos mentis;* and the said judge is authorized to make all necessary orders to carry into effect this power. Where the person so sent is not a pauper, he shall be supported out of his own estate, according to the regulations to be prescribed by the court, as on a writ of *de lunatico inquirendo.*—Code of Laws, 1902, sec. 2264.

SOUTH DAKOTA.

Who are capable of committing crimes.—Lunatics, insane persons, and all persons of unsound mind, including persons temporarily or partially deprived of reason, upon proof that at the time of committing the act charged against them they were incapable of knowing its wrongfulness.—Penal Code, 1903, sec. 16, 4.

Sections 544-551 of the Code of Criminal Procedure, 1903, prescribing the method for determining when an accused person is insane at the time of the trial, are practically the same as sections 1367-1372 of the Penal Code of California, 1901.

Defense of insanity and acquittal.—If the defense is the insanity of the defendant, the jury must be instructed, if they acquit him on that ground, to state the fact with their verdict. The court may thereupon, if the defendant is in custody, and it deems his discharge dangerous to the public peace or safety, order him to be committed to the care and custody of the hospital for insane until he becomes sane.—Laws of 1911, chap. 171.

Insane person entitled to habeas corpus.—All persons confined as insane shall be entitled to the benefit of the writ of *habeas corpus,* and the question of insanity shall be decided at the hearing, and if the judge or court shall decide that the person is insane, such decision shall be no bar to the issuing of the writ the second time, whenever it shall be alleged that such person has been restored to reason.—Political Code, 1903, sec. 2826.

TENNESSEE.

Person accused of crime found insane.—When, upon the arraignment of any person not previously known or believed to be insane, who may be charged with

a criminal offense punishable by imprisonment in the penitentiary or death, the plea of present insanity is urged in his or her behalf, the court shall charge the jury that if, from the evidence, they believe the defendant to be insane, they shall so find; but the powers of courts to commitment to the hospital for the insane shall not extend to insane persons arraigned for felonious assaults or misdemeanors only, or those who, by reason of their insane condition, may be admissible to the hospitals for the insane under the general laws of commitment provided therefor.—Code of 1896, sec. 2631.

[*Insanity of indicted person*].—If the court in which a person is indicted for a criminal offense is satisfied that he is *non compos mentis,* and he has been so for four successive terms, it may discharge him from custody upon the recognizance of good and sufficient sureties, acknowledged before the court, for his personal appearance at the next succeeding term, in such sum as the court may direct. And the court may renew the recognizance from term to term, in its discretion, so long as the defendant continues under the disability.—Code of 1896, sec. 7439.

TEXAS.

Insanity a defense.—No act done in a state of insanity can be punished as an offense. No person who becomes insane after he committed an offense shall be tried for the same while in such condition. No person who becomes insane after he is found guilty shall be punished for the offense while in such condition.—Penal Code, 1911, title I, chap. 3, art. 39.

Proof of insanity according to common law.—The rules of evidence known to the common law in respect to the proof of insanity shall be observed in all trials where that question is in issue.—Penal Code, 1911, title I, chap. 3, art. 40.

Acquittal for insanity.—When the defendant is acquitted on the ground of insanity, the jury shall so state in their verdict.—Code of Criminal Procedure, 1911, title 8, chap. 6, art. 780.

UTAH.

Sections 5052-5059 of the Compiled Laws, 1907, prescribing the method and procedure for determining whether an accused person is insane at the time of the trial, are the same as sections 1367-1372 of the Penal Code of California, 1901.

VERMONT.

Commitment for observation.—When a person is indicted for a criminal offense, or is committed to jail on a criminal charge by a justice, municipal or city court, the presiding judge of the county court before whom said person is to be tried, may, in term time or vacation, if a plea of insanity is made in court or if he is satisfied that a plea of insanity will be made, order said person into the care of the superintendent of the Vermont state hospital for the insane, to be detained and observed by said superintendent until further order of said judge or of such county court, that the truth or falsity of such plea may be ascertained.

When person is not indicted because insane.—When a person held in prison on a charge of having committed an offense is not indicted by the grand jury by reason of insanity, the grand jury shall so certify to the court, and thereupon, if the discharge or going at large of said insane person is considered dangerous to the community, the court may order him confined in the county jail, or in the Vermont state hospital for the insane, or some other suitable place, at his own expense, if he has estate sufficient for that purpose, and if not at the expense of the state.

On acquittal by reason of insanity.—When a person tried on a complaint, information or indictment for a crime or offense is acquitted by the jury by reason of insanity, the jury, in giving its verdict of not guilty, shall state that it is given for such cause, and thereupon, if the discharge or going at large of said insane person is considered dangerous to the community, the court may order him, in its discretion, to be confined in the state prison, or in the Vermont state hospital for the insane, or in some other suitable place, on such terms

as the court directs, and at his own expense, if he has sufficient estate for that purpose, and if not, at the expense of the state.

Insane respondent may petition county court for discharge.—A person confined under an order of court, pursuant to the two preceding sections, shall be discharged from confinement only by order of the county court for the county in which the order for confinement was made, upon petition therefor, made returnable to a stated term of such court, and served upon the state's attorney for that county at least twelve days before the beginning of the term. This section shall not affect the right of a person so confined to sue out a writ of *habeas corpus.*—Public Statutes, 1906, sec. 2327-2330.

Court may discharge or recommit him.—If, upon hearing, it appears that said person has become sane, and the court considers that his release or going at large is not dangerous to the community, it shall order his discharge from confinement; otherwise the petition shall be dismissed and said person, if before the court, shall be recommitted to the place of confinement from which he was brought.—Public Statutes, 1906, sec. 2334.

Transfer of prisoner in jail awaiting trial.—When a person is under arrest charged with an offense punishable by death or imprisonment in the state prison or house of correction, if it appears to the governor that such person is insane and in need of treatment therefor, he may by order in writing, direct the officer having such person in custody to remove him to the Vermont state hospital for the insane, pending proceedings upon such charge.—Public Statutes, 1906, part of sec. 6084.

Expert evidence.—A superior judge or the attorney general may, to prevent a failure of justice, order an examination to be made by an expert or experts, either within or without the state, in the investigation of a crime supposed to have been committed within the state. Such order shall be made only on the petition of the state's attorney for the county in which the crime is supposed to have been committed, setting forth the facts because of which the order is applied for, and verified by affidavit, and shall name the expert or experts by whom the examination is to be made, and limit the expense of the examination; and such expense shall be paid in the manner provided for the payment of witness fees in state causes in the county court.—Public Statutes, 1906, sec. 2345.

VIRGINIA

Admission [to asylum] of persons charged with crime.—If any person who is charged with, or indicted for, any crime be found, in the court in which he is so charged or indicted, to be insane at the time appointed for trial of such indictment, the court shall order him to be committed to the department for the criminal insane at the proper hospital, where he shall be kept in custody and cared for until he has been restored to sanity. If, prior to the time for trial of any persons under complaint or indictment for any crime, either the court or the attorney for the commonwealth has reason to believe that such person is in such mental condition that his confinement in a hospital for the insane is necessary for proper care and observation, the said court may commit such person to the department for the criminal insane under such limitations as it may order pending the determination of his mental condition; and in such case the court, in its discretion, may appoint one or more experts in insanity, or other qualified physicians, not to exceed three, to examine the defendant before such commitment is ordered, and make such investigation of the case as they may deem necessary, and report to the court the condition of the defendant at the time of their examination. Fees commensurate with the professional service rendered, and to be fixed by the court, together with necessary expenses, shall be audited and paid the experts or physicians, as in the case of other court expenses. A copy of the complaint or indictment, attested by the clerk, together with the medical report, shall be delivered with such person to the superintendent of the hospital to which he shall have been committed under the provisions of this act. If any such person so removed to the department for the criminal insane at the proper state hospital is in the opinion of the superintendent, not insane, or when such person, if insane, has been restored

to sanity, he shall forthwith be brought back to the jail or custody from which he was removed, where he shall be held in accordance with the terms of the process by which he was originally committed or confined.—Acts of Assembly, 1910, chap. 320 (amending sec. 1682 of the Code of 1887).

Verdict of acquittal by reason of insanity, to state the fact; accused to be sent to asylum.—When a person tried for an offense is acquitted by the jury by reason of his being insane, the verdict shall state the fact; and thereupon the court shall order him to be sent to one of the asylums, or, if it deems him dangerous, order him to be committed to jail until he can be sent.—Code of 1887, sec. 4035.

Disposition of lunatic charged with crime when restored to sanity.—When any person, confined in the department for the criminal insane at the proper hospital and charged with crime, and subject to be tried therefor, or convicted for crime, shall be restored to sanity, the superintendent shall give notice thereof to the clerk of the court by whose order he was confined, and deliver him in obedience to the proper precept: *Provided,* No person who has been convicted for a crime punishable by death shall be so delivered until the said superintendent and the superintendent of one of the other state hospitals for the insane, to be designated by the commissioner of state hospitals, concur in the opinion that the said person has been restored to sanity. When any person, charged with or indicted for any offense which may be punishable by death, has been adjudged insane, both at the time of the offense and at the time when, but for such insanity, he would have been tried, shall be ordered by the court to be committed to the department for the criminal insane, at the proper hospital, such person shall not be discharged therefrom until the superintendent of that hospital and the superintendent of two of the other hospitals, designated by the commissioner of state hospitals, shall be satisfied, after a thorough examination, that such person has been restored to sanity and may be discharged without danger to others, and provided such discharge is given upon the consent and advice of the commissioner of state hospitals and the special board of directors.—Acts of Assembly, 1910, chap. 321 (amending sec. 1687 of the Code of 1887).

[*Determination of sanity upon writ of habeas corpus*].—Any person held in custody as insane may by means of a writ of *habeas corpus* have the question of the legality of his detention and of his sanity determined by a court of competent jurisdiction. If such person be not held in custody, then he may file his petition in the circuit court of the county or city in which he resides, or in which he was adjudged insane, or before the judge thereof in vacation, and upon such petition, after notice to the authorities of the hospital or to the person claiming the right to the custody of such adjudged insane person, such court or judge thereof in vacation shall determine whether such person be sane or insane.—Acts of Assembly, extra session, 1902-3-4, chap. 139, page 128 (amending sec. 1675 of the Code of 1887).

WASHINGTON

Exemptions from being committed as insane.—No case of idiocy, imbecility, harmless chronic mental unsoundness, or acute *mania a potu* shall be committed to the hospital for the insane.—Ballinger's Annotated Statutes, 1897, sec. 2666

Commitment of arraigned person.—The superior courts of the state shall have power to commit to the hospital for the insane any person who, having been arraigned for an indictable offense, shall be found by the jury to be insane at the time of such arraignment, and the costs of such commitment shall be paid in the same manner.—Ballinger's Annotated Statutes, 1897, sec. 2664.

Criminal insane defined.—Any person who shall have committed a crime while insane, or in a condition of mental irresponsibility, and in whom such insanity or mental irresponsibility continues to exist, shall be deemed criminally insane within the meaning of this act. No condition of mind induced by the voluntary act of a person charged wth a crime shall be deemed mental irresponsibility within the meaning of this act.

Plea of insanity.—When it is desired to interpose the defense of insanity or mental irresponsibility on behalf of one charged with a crime, the defendant,

his counsel or other person authorized by law to appear and act for him, shall at the time of pleading to the information or indictment file a plea in writing in addition to the plea or pleas required or permitted by other laws than this, setting up (1) his insanity or mental irresponsibility at the time of the commission of the crime charged, and (2) whether the insanity or mental irresponsibility still exists, or (3) whether the defendant has become sane or mentally responsible between the time of the commission of the crime and the time of the trial. The plea may be interposed at any time thereafter, before the submission of the cause to the jury if it be proven that the insanity or mental irresponsibility of the defendant at the time of the crime was not before known to any person authorized to interpose a plea.

Verdict.—If the plea of insanity or mental irresponsibility be interposed, and evidence upon that issue be given, the court shall instruct the jury when giving the charge, that in case a verdict of acquittal of the crime charged be returned, they shall also return special verdicts finding (1) whether the defendant committed the crime and if so, (2) whether they acquit him because of his insanity or mental irresponsibility at the time of its commission, (3) whether the insanity or mental irresponsibility continues and exists at the time of the trial, and (4) whether, if such condition of insanity or mental irresponsibility does not exist at the time of the trial, there is such likelihood of a relapse or recurrence of the insane or mental irresponsible condition, that the defendant is not a safe person to be at large. Forms for the return of the speclal verdicts shall be submitted to the jury with the forms for the general verdicts.

Discharge.—If the jury find by their special verdicts that the defendant committed the crime charged, that he is acquitted because of his insanity or mental irresponsibility at the time of its commission, and that before the trial he has become a sane or mentally responsible person, and is not liable to a relapse or recurrence of the insane or mentally irresponsible condition, and is a safe person to be at large, he shall be discharged. If the jury find that the defendant committed the crime charged, that he is acquitted because of his insanity or mental irresponsibility at the time of its commission, and that the insanity or mental irresponsibility still exists, or, if it does not exist, that he is so liable to a relapse or recurrence of the insane or mentally irresponsible condition as to be an unsafe person to be at large, the court shall enter judgment in accordance therewith, and shall order the defendant committed as a criminally insane person until such time as he shall be discharged as hereinafter provided.

Statement of facts.—Either party to the cause may have the evidence and all of the matters not of record in the cause made a part of the record by the certifying of a statement of facts or bill of exceptions as in other cases. If an appeal should be not taken, such statement of facts or bill of exceptions shall remain on file in the office of the clerk of the court where the cause was tried, and if an appeal be taken, the statement of facts or bill of exceptions shall be returned from the supreme court to the court where the cause was tried when the supreme court shall have rendered its final judgment in the cause.

[*Discharge from insane hospital*].—When any person committed hereunder shall claim to have become sane or mentally responsible and to be free from danger of any relapse or recurrence of mental unsoundness and a safe person to be at large, he shall apply to the physician in charge of the criminal insane for an examination of his mental condition and fitness to be at large. If the physician shall certify to the warden that there is reasonable cause to believe that such person has become sane since his commitment and is a safe person to be at large, the warden shall permit him to present a petition to the court that committed him, setting up the facts leading to his commitment, and that he has since become sane and mentally responsible, and is in such condition that he is a safe person to be at large, and shall pray his discharge from custody. The petition shall be served upon the prosecuting attorney of the county, whose duty it shall be to resist the application. No other pleadings than the petition need be filed, and the court shall set the cause down for trial before a jury, and the trial shall proceed as in other cases. The sole issue to be tried in the case shall be whether the person petitioning for a discharge has, since his com-

mitment, become a safe person to be at large, and the burden of proof shall be upon him. If the evidence given upon his trial upon the criminal charge shall have been preserved by statement of facts or bill of exceptions as hereinbefore provided, either party may read such parts of that record as may be desired as evidence upon the hearing. The jury shall be required to find whether the petitioner has become sane since his commitment, is not liable to a recurrence of the mental unsoundness or relapse, and is a safe person to be at large. If they so find, he shall be entitled to a discharge. If not, his petition shall be dismissed, and he shall be remitted to custody. Either party may appeal to the supreme court from the judgment discharging the petitioner or remitting him to custody, in the same manner that appeals in other cases are taken. The judgment of remission shall be conclusive that the petitioner is an unsafe person to be at large at the time of its entry; but if he shall subsequently claim to have become a sane and safe person, to be at large, he may upon a certificate of probable cause by the attending physician, which shall show a change in his mental condition since the last trial, his present sanity and fitness to be at large, again petition for discharge, and the proceedings thereon shall be as hereinabove provided.—Laws of 1907, chap. 30, secs. 1-6.

WEST VIRGINIA

[*Inquiry regarding sanity of accused person*].—If a court in which a person is indicted for a criminal offense, see reasonable ground to doubt his sanity at the time at which but for such doubt he would be tried, it shall suspend the trial until a jury inquire into the fact of such sanity. Such jury shall be impaneled at its bar. If the jury find the accused to be sane at the time of their verdict, they shall make no further inquiry, and the trial in chief shall proceed. If they find that he is insane they shall inquire whether he was so at the time of the alleged offense. If they find that he was so at that time, the court may dismiss the prosecution, and either discharge him or to prevent his doing mischief, remand him to jail, and order him to be removed thence to the hospital for the insane. If they find he was not so at that time, the court shall commit him to jail, or order him to be confined in said hospital until he is so restored that he can be put upon his trial.—Code of 1899, chap. clix, sec. 10.

Verdict and commitment.—When a prisoner tried for an offense is acquitted by the jury, by reason of his being insane, the verdict shall state the fact; and thereupon the court may, if it deem him dangerous, order him to be committed to jail until he can be sent to the hospital for the insane.—Code of 1899, chap. clix, sec. 14.

WISCONSIN

Proceedings if accused insane at trial.—When any person is indicted or informed against for any offense if the court shall be informed, in any manner, that there is a probability that such accused person is, at the time of his trial, insane and thereby incapacitated to act for himself, the court shall, in a summary manner, make inquisition thereof by a jury or otherwise as it deems most proper; and if it shall be thereby determined that such accused person is so insane his trial for such offense shall be postponed indefinitely, and the court shall thereupon order that he be confined in one of the state hospitals for the insane, and the superintendent of such hospital shall receive such insane person upon such order and confine and treat him in such hospital as other insane persons are kept and treated therein; and upon the recovery of such person from his insanity the said superintendent shall notify the sheriff of the county in which such indictment or information shall be pending of such recovery, and said sheriff shall thereupon take such accused person into his custody, and he shall be committed to the county jail of said county or held to bail for his appearance at the next succeeding term of said court for trial for such offense; but in case it shall be determined by the proper authorities of said hospital that the insanity of such accused person is incurable he shall then be treated and disposed of as other cases of incurable insanity according to law.—Statutes of 1898, sec. 4700.

Trial of question of insanity.—When any person is indicted or informed against for any offense and such person or counsel in his behalf shall, at the

time and before the commencement of the trial, claim or pretend that such person, at the time of the commission of such alleged offense, was insane and for that reason was not responsible for his acts, the court shall order a special plea, setting up and alleging such insanity, to be filed on his behalf with the plea of not guilty; and the special issue thereby made shall * * * * * * be tried * * * * *and determined by the jury with the plea of not guilty;* and if such jury shall find upon such special issue that such accused person was so insane or that there is reasonable doubt of his sanity at the time of the commission of such alleged offense, they shall * * * return a verdict of *not guilty because insane.* The presumption of such accused person's sanity, at the time of the commission of such alleged offense, shall prevail and be sufficient proof thereof on the trial of such special issue, * * *, unless the evidence produced on such trial shall create in the minds of the jury a reasonable doubt of the sanity of such accused person at the time of the commission of such alleged offense. If the defenadnt shall be found by the jury "not guilty because insane," he shall forthwith be committed by the court to one of the state hospitals for the insane, there to be detained and treated until he shall be discharged according to law. A re-examination of his sanity may be had as in the case of other patients, but no such person so committed shall be discharged from detention unless the magistrate or the jury upon whom devolves the duty to pass upon his sanity shall in addition to finding him sane also find that he is not likely to have such a recurrence of insanity as would result in acts which, but for insanity, would constitute crimes.—Laws of 1911, chap. 221 (amending sec. 4697 of the Statutes of 1898).

Commitment of accused persons.--The several courts of record in this state may commit tor safe keeping and treatment to either hospital for the insane any person who shall be under charge of or convicted before such court of any crime punishable by imprisonment in the state prison and awaiting hearing, trial, conviction or sentence on account of alleged insanity at the time of the commission of such crime or at any time afterwards and prior to sentence.—Statutes of 1898, part of sec. 596.

Habeas corpus.—All person confined in either hospital as insane patients, except persons charged with or convicted of crime and confined therein on the order of any court as provided in the next following section, shall be entitled to the benefit of the writ of *habeas corpus,* and the question of insanity shall be determined by the court or judge issuing such writ; and if such court or judge shall decide that the person is insane such decision shall be no bar to the issuing of said writ a second time if it shall be claimed that such person, not being so confined in pursuance of the order of any such court, has been restored to reason.—Supplement of Statutes, 1906, sec. 595.

Discharge from asylum.—"Upon the receipt by the judge of the circuit court or any judge of any other court of record of the county in which any insane person is confined, or the county from which he was committed, of a petition verified by the oaths of any resident of the county wherein such circuit judge holds court or in which such other judge resides, setting forth that the person in whose behalf the petition is filed has theretofore been adjudged insane and alleging that such person is now believed by petitioner to be sane and requesting a judicial examination as to that fact, and further stating whether or not such person has a general guardian, and if he has, the name and residence of such guardian, such judge shall by order appoint two disinterested physicians, of good repute *and residents of the county,* to examine and report to him whether in their opinion the person named in such petition is sane or insane. If such person has such a guardian the judge shall at the time he appoints such physicians, cause notice of the time and place of making such examination to be served upon him, and such general guardian or any relative or friend of the person to be examined may appear at such examination. If such physicians report such person sane and the judge is satisfied that he is sane and no demand for a jury trial is made, a judgment to that effect shall forthwith be entered; but if the judge shall direct, or the person examined, his guardian or any of such person's friends or relatives shall demand, a trial by jury, an order for such a trial shall forthwith be entered. After hearing the

evidence and arguments the jury shall return a verdict of sane or insane as they agree; if they disagree they shall be discharged and another jury may be impaneled. Judgment shall be entered in accordance with the fact found by the jury; if they find that the person is insane the judge shall make a further order of commitment to some hospital or asylum, or not, as in his judgment the facts warrant."—Statutes of 1898, sec. 587 (portion).

WYOMING

Complaint and trial [as to insanity of accused person].—If any person accused of or convicted of any crime, misdemeanor or offense against the laws of this state, or against the laws of the late territory of Wyoming, shall be confined in any penitentiary, county jail of any county, or other place of confinement, awaiting trial, or who is confined therein under and pursuant to the sentence or judgment of any court or justice of the peace in this state, and is of unsound mind, any officer or person having such person of unsound mind in his charge shall, and any citizen of this state may, make complaint thereof, and the question of the sanity of such person shall be inquired of, tried and determined under and according to the law of this state providing for and regulating trials, inquisitions, and proceedings in cases of inquiry into the sanity of other persons of unsound mind.

[*Care of accused or convicted person, who is insane*].—If any such person accused of or convicted of any crime, misdemeanor or offense shall be found of unsound mind or insane upon such inquiry, trial or proceeding, he or she shall be forthwith taken to such place or places for treatment as shall be provided for or prescribed by the state board of charities and reform either generally, or for that particular case, and it shall be the duty of any and all persons, boards, superintendents, officers and employees of the place so designated by such board, to receive the same person into custody, and to treat him or her according to the regulations and practice of such place or institution.

Disposition of person upon recovery of reason.—If any person or patient so confined in any hospital or asylum or place designated by the said board of charities and reform shall recover his or her reason, he or she shall be returned to the penitentiary, county jail or other place of confinement or imprisonment where such person was confined at the time of such inquiry, trial or proceeding to determine his or her sanity or insanity, there to be tried or serve out or undergo his or her term of imprisonment if any part thereof remains, as the nature of the case shall require.—Compiled Statutes, 1910, secs. 469-471.